

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A22-0894**

Jay Tody Construction, LLC,  
Respondent,

vs.

Justin Schlegel, et al.,  
Appellants.

**Filed February 6, 2023  
Affirmed  
Bryan, Judge**

Cass County District Court  
File No. 11-CV-21-395

Kristine M. Erickson, Rosenmeier Law Office, LLC, Little Falls, Minnesota (for respondent)

Edward R. Shaw, Ed Shaw Law, Brainerd, Minnesota (for appellants)

Considered and decided by Larkin, Presiding Judge; Ross, Judge; and Bryan, Judge.

**NONPRECEDENTIAL OPINION**

**BRYAN**, Judge

In this contract dispute, appellants challenge the district court's decision to enter judgment in favor of respondent. They argue that the evidence presented supports factual findings that respondent performed incomplete and defective work, justifying appellants' failure to pay respondent for those services. Appellants also challenge the district court's decision to award respondent attorney fees, arguing that the statute permitting an award of

attorney fees does not apply because neither appellant was a general contractor. We conclude that the district court did not clearly err in making the challenged factual findings underlying the judgment and award of attorney fees.

## **FACTS**

Appellants Justin Schlegel and Jessica Schlegel hired Jay Tody of respondent Jay Tody Construction, LLC, to do framing, roofing, and other work on their new home. When the Schlegels failed to pay the final invoice, Tody filed a claim in conciliation court. After the conciliation court issued an order for judgment in favor of Tody, the Schlegels appealed to the district court, and the matter proceeded to a bench trial.

Viewing the record in the light most favorable to the judgment, the trial testimony established that the parties entered into an oral agreement that the Schlegels would pay Tody hourly for his work on their home. The Schlegels also agreed to provide Tody with building supplies and blueprints for the project. Tody began work in July 2019. Tody testified that the blueprints that the Schlegels provided to Tody were not complete, and the garage footings had been poured by Justin Schlegel's father to inaccurate measurements. In addition, the materials ordered for trusses by the Schlegels did not match the measurements created by the prior work, and some window measurements provided by the Schlegels were also incorrect. The parties worked together to address these and other issues that occurred during the construction process. Tody finished the agreed upon work on September 4, 2019, and he submitted a final invoice to Jessica Schlegel the same day. Tody testified that, at that time, the Schlegels had no issues with his work and all defects brought to his attention had been remedied. According to Tody, Jessica Schlegel informed

him that she would mail him a check the next day paying the final invoice. The Schlegels, however, did not send Tody the payment.

Justin Schlegel testified that he acted as the general contractor during the project, purchased building materials, was onsite daily, assisted with Tody's work, and engaged various subcontractors to work on the project, including his father. He contested Tody's testimony regarding the concrete footings, claiming that there were no issues with the quality of work that his father completed. Instead, Justin Schlegel believed it was Tody who performed substandard work. The Schlegels hired A.Y. to complete the work that they deemed unsatisfactory. A.Y. also testified, explaining that, in his personal opinion, defects existed in the work completed by Tody. However, A.Y. also agreed that some of the differences between Tody's work and his own could be a matter of personal preference and that neither was necessarily right or wrong.

In February 2022, the district court issued an order awarding Tody \$11,474.90 plus statutory interest of 4%. The district court determined that Tody's testimony was credible and concluded that the Schlegels breached the parties' valid contract. After initially reserving the issue of attorney fees to permit the parties to submit relevant materials, the district court also issued an order awarding \$6,894.50 in attorney fees, plus statutory interest. The Schlegels appeal.

### **DECISION**

The Schlegels argue that we must reverse the judgment because the district court clearly erred by finding that Tody completed the work required of him under oral contract without defect. The Schlegels also argue that we must reverse the award of attorney fees

because the district court erroneously found that Justin Schlegel served as general contractor for the project.<sup>1</sup> Because our review of the record does not leave us with the firm conviction that the district court made a mistake in finding these facts, we affirm the district court.

When a contractor has substantially performed his contract, the contractor “is entitled to recover the contract price, less the sum necessary to cure the defects.” *Sward v. Nash*, 40 N.W.2d 828, 830 (Minn. 1950). In addition, Minnesota Statutes section 337.10, subdivision 3 (2022),<sup>2</sup> requires the general contractor<sup>3</sup> to promptly pay subcontractors and mandates an award of attorney fees to the prevailing party in a dispute arising out of a general contractor’s failure to pay. *Id.* Whether Tody completely performed without defect and whether Justin Schlegel acted as a general contractor are both questions of fact.<sup>4</sup>

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<sup>1</sup> The Schlegels also point out that the principal amount of the final invoice was less than the amount of the judgment. They attribute this to the 3% interest that Tody imposed on the unpaid final invoice prior to the conciliation court hearing. We observe that this interest is unrelated to the statutory interest awarded by the district court. In addition, in the hearings below, the Schlegels did not independently challenge Tody’s authority to apply an interest charge to the past due amount of the final invoice. Therefore, we deem the argument forfeited and need not address it. *State v. Balandin*, 944 N.W.2d 204, 220 (Minn. 2020) (“We consider issues that are not raised in the district court but are raised for the first time on appeal to be forfeited.”).

<sup>2</sup> The district court cited section “377.10, subd. 3,” but this was a clerical error.

<sup>3</sup> We observe that the statute refers to a “prime contractor,” but the parties used the term “general contractor” throughout their submissions. We discern no meaningful distinctions between those terms in this context and use the term “general contractor” in this opinion.

<sup>4</sup> The parties do not dispute that they entered into a building and construction contract within the meaning of chapter 337. Nor do they contend that any statutory provisions are ambiguous or dispute the meaning of the term general contractor. Therefore, we apply the plain meaning of the statutory terms without further construction, *Burrell v. State*, 978 N.W.2d 271, 274 (Minn. App. 2022), *rev. denied* (Minn. Oct. 18, 2022), and determine whether the district court clearly erred in its factual findings regarding Justin Schlegel’s conduct and role.

On review, “[f]indings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses.” Minn. R. Civ. P. 52.01. “In applying this rule, we view the record in the light most favorable to the judgment of the district court.” *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999). To reverse, a reviewing court must have a “definite and firm conviction that a mistake has been made” because the district court’s findings are “manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quotation omitted). Appellate courts do not “reconcile conflicting evidence” or “weigh the evidence as if trying the matter de novo.” *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021) (quotations omitted). “When the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary.” *Id.* at 223 (quotation omitted).

Giving due deference to the district court, our review of the evidence presented does not leave us with “the definite and firm conviction that a mistake has been made.” *See Fletcher*, 589 N.W.2d at 101 (quotation omitted). The district court found that Tody completely performed his obligations under the contract and that any alleged defects in Tody’s work were remedied prior to the conclusion of his work for the Schlegels. This finding is supported by Tody’s testimony, which the district court determined to be credible, despite the contrary testimony offered by the Schlegels. The district court also believed that Justin Schlegel’s testimony was internally inconsistent and contradicted other

evidence. Moreover, A.Y. testified that some of the alleged defects could be characterized as a matter of personal preference and not necessarily right or wrong. We affirm the decision to enter judgment in Tody's favor.

Similarly, the evidence presented supports the district court's findings regarding whether Justin Schlegel acted as a general contractor. We first note that Justin Schlegel's own testimony supports this finding: he testified that he was the general contractor for the project. We also observe that the evidence presented shows—and Justin Schlegel does not dispute—that he engaged the other subcontractors who worked on the project, was present during the construction work, and provided Tody building supplies and blueprints. Based on this evidence, the district court did not clearly err in finding that Justin Schlegel was the general contractor for the project. Therefore, we affirm the district court's decision to award attorney fees.

**Affirmed.**